

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DEON CALVIN LARKINS,

Defendant-Appellee.

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UNPUBLISHED

October 7, 2010

No. 292799

Wayne Circuit Court

LC No. 09-006223-FH

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

TALBOT, P.J. (*dissenting*).

I respectfully dissent as I believe sufficient evidence existed to support a bind over for negligent homicide.

This action arises out of a motor vehicle accident involving a stopped tractor-trailer and two passenger vehicles in the vicinity of the I-96 and I-94 interchange. It is undisputed that the tractor-trailer was stopped in the roadway. There is no suggestion that weather conditions or visibility played any part in this accident. Brian Melville was the driver of a mini-van that directly impacted the rear of the tractor-trailer. Deon Larkins was driving the passenger vehicle that rear-ended the car driven by Melville. Melville died as a result of injuries sustained in this accident and Larkins was charged with negligent homicide.<sup>1</sup>

“The purpose of a preliminary examination is to determine whether a crime has been committed and if so, whether there is probable cause to believe that the defendant committed it. During a preliminary examination, the prosecution is not required to prove that a defendant was guilty beyond a reasonable doubt” but “there must be evidence to establish each element of the offense, or evidence from which those elements may be inferred.”<sup>2</sup> To sustain the burden of proof on a charge of negligent homicide, the prosecution is required to demonstrate: (1) the defendant was operating a motor vehicle; (2) that the defendant was operating the vehicle in a negligent manner; (3) that the defendant's negligence was a substantial cause of an accident resulting in injuries to the victim, and; (4) that the victim's injuries were the cause of the victim's

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<sup>1</sup> MCL 750.324.

<sup>2</sup> *People v Traugher*, 432 Mich 208, 215-216; 439 NW2d 231 (1989) (citations omitted).

death.<sup>3</sup> Based on the statutory language, deaths that result from the operation of a motor vehicle are rendered criminal by demonstration of ordinary negligence only.<sup>4</sup>

“Ordinary negligence is defined as the want of reasonable care; that is, failing to do what an ordinarily sensible person would have done under the conditions and circumstances then existing.”<sup>5</sup> This elucidated standard is premised on the long standing recognition in Michigan law that “[e]very person driving upon the public highway, or in other places frequented by others, is bound to exercise reasonable care and caution to prevent injury to others.”<sup>6</sup> Ordinary negligence is found to occur:

In the doing of acts which are naturally and inherently dangerous to life, which a reasonable person ought to perceive are likely to produce injury to another. Ordinary negligence is greater than or above slight negligence, but less than gross negligence. Ordinary negligence is characterized by thoughtlessness, heedlessness and inattention.<sup>7</sup>

Specifically, “[v]iolation of the assured clear distance statute has been held to constitute negligence per se.”<sup>8</sup>

Addressing each of the elements the prosecutor was required to prove, there was sufficient evidence to support the bind over of Larkins on the charge of negligence homicide. First, there was no dispute that Larkins was operating one of the motor vehicles involved in this collision. Second, supporting a finding that Larkins was “operating the vehicle in a negligent manner” are the following facts: (a) the tractor-trailer was stopped and standing in the roadway and that it was not a sudden or an “abrupt” stop; (b) there existed no evidence that Larkins attempted to decelerate or brake before the impact as there were no skid marks and, in fact, Larkins admitted to the investigating police officer that he did not engage his brakes, (c) the extensive damage to the passenger cars and evidence that the impact was of sufficient force to actually result in Melville’s and Larkins’ vehicles ending in a skewed position on the roadway facing the median, (d) the absence of any evidence or indication that Melville had been traveling at an unsafe speed or unexpectedly changed lanes into the path of Larkins’ vehicle, and (e) the

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<sup>3</sup> CJI2d 16.14. See also MCL 750.324; *People v Tims*, 449 Mich 83, 95, 99, 103-104; 534 NW2d 675 (1995); *People v Paulen*, 327 Mich 94, 99; 41 NW2d 488 (1950).

<sup>4</sup> See MCL 750.324; *People v Abramczyk*, 163 Mich App 473, 477-478; 415 NW2d 249 (1987).

<sup>5</sup> See *Traughber*, 432 Mich at 217, citing CJI 16:5:02(4).

<sup>6</sup> *Id.* at 217-218, quoting *People v McMurchy*, 249 Mich 147, 167; 228 NW 723 (1930). See also, *People v Feddersen*, 327 Mich 213, 218; 41 NW2d 527 (1950) and *People v McKee*, 15 Mich App 382, 385-386; 166 NW2d 688 (1968).

<sup>7</sup> *Traughber*, 432 Mich at 219 (citation omitted).

<sup>8</sup> *People v Florida*, 61 Mich App 653, 663; 233 NW2d 127 (1975), citing *McKinney v Anderson*, 373 Mich 414, 419; 129 NW2d 851 (1964). See also *People v Good*, 287 Mich 110, 114; 282 NW 920 (1938), approving a trial court’s jury instruction that a defendant’s failure to observe the deceased constituted negligence as a matter of law.

point of impact of Larkins' vehicle with the rear-end of Melville's vehicle was "square in the bumper," indicating no attempt at avoidance or to swerve.

Because it is well-established that circumstantial evidence and reasonable inferences arising from such evidence is sufficient to prove the elements of a crime<sup>9</sup>, it was not unreasonable for the district court to infer from this evidence that Larkins was ordinarily negligent for having failed to observe the stopped tanker in the roadway, breaching his duty of maintaining a proper lookout ahead and failing to stop within the assured clear distance.<sup>10</sup>

Regarding the third element requiring that Larkins negligence be "a substantial cause of an accident resulting in injuries to the victim," sufficient evidence existed to establish probable cause. While not absolutely conclusive, evidence existed that although there were two points of impact, the collision was initiated by Larkins' vehicle striking Melville and pushing him into the rear end of the tractor-trailer. While the circuit court judge dismissed the conflicting evidence on this matter as merely "semantics," such a conclusion cannot be reached on a careful reading of the preliminary examination transcript. The medical examiner opined Melville suffered multiple injuries, including a four inch laceration to the "left occipital scalp," which involved the left side of the back of the victim's head having contact with a solid object such as his vehicle's head rest. The victim also suffered a "gaping atlanto occipital dislocation with hemorrhage into the neck, soft tissue" suggesting a very strong impact.

Although questions arose whether Melville was not restrained by a seatbelt in the vehicle and implying his contribution or an intervening cause for the injuries sustained, this did not impede a finding of probable cause. The police officers could not conclusively testify whether Melville was using his seatbelt at the time of the accident. While one of the officers in his report indicated an absence of restraints, it appears he was referencing air bags and not the use of a seatbelt. The medical examiner indicated that he observed and recorded marks on Melville's lower abdomen, which might have been from a seatbelt. The medical examiner did indicate that Melville was received with clothing for the autopsy and there is no indication in his report or the inventory of the victim's attire regarding the presence of a trouser belt to serve as an alternative explanation of how the observed markings on the body might have been produced. This was certainly sufficient to suggest that Larkins' negligence comprised a substantial cause of the accident that resulted in the injuries to Melville.

Finally, there existed no question or dispute that the injuries sustained by Melville in this accident were the result of his death, satisfying the fourth element for negligent homicide.

Based on the evidence presented at the preliminary examination, it was reasonable to infer that Larkins was ordinarily negligent for having failed to observe a stopped vehicle in the road way, his rear-end collision with Melville's vehicle and the resultant injuries. Based on the

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<sup>9</sup> *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

<sup>10</sup> *Fedderson*, 327 Mich at 218.

evidence, I would sustain the district court's bind over of Larkin on the charge of negligent homicide.<sup>11</sup>

/s/ Michael J. Talbot

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<sup>11</sup> By my conclusion I do not seek to infer that the evidence, as presented in the preliminary examination, will necessarily be sufficient to sustain the burden of proof at any subsequent trial.